

A corporation contributed funds and realty adjacent to its plant reception area to an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The exempt organization used the funds and realty to establish a park for the use of the general public. Held, acceptance of this gift by the exempt organization will not affect its exempt status even though the donor retained the right to continue using the picture of a certain scenic view in the park as its brand symbol.

Advice has been requested whether an organization which operates in the manner described below will lose its exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

In order to establish a park for the use of the general public, a taxable corporation transferred land (adjacent to and partially encircling the corporation's property) to an existing tax-exempt organization formed by it for charitable and educational purposes. The corporation's officers serve as the directors of the organization. Prior to the transfer, the corporation had developed the land as a park to attract visitors to its industrial site. It had also adopted as its brand symbol a picture of a certain scenic view in the park. The right to the continued use of this identifying symbol in its advertising and public relations programs was retained by the corporation at the time of the transfer of the land to the organization. The park is open to the general public, there is no access from the park to the corporation's plant reception areas, and nothing has been done to identify the park with the corporation's business, except to retain in the park the scenic attraction. The corporation's cash contributions to the organization were to be used to operate the park and maintain the scenic view.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of certain organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term 'charitable' as used in section 501(c)(3) of the Code includes, among other things, the erection or maintenance of public buildings, monuments, or works, the lessening of the burdens of Government, and the promotion of social welfare by organizations designed to accomplish any of these purposes. Establishing and maintaining a public park is an activity similar to those mentioned and may qualify as charitable.

However, section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes described in section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or

his family, shareholders of the organization, or persons controlled by such private interests.

In this case, the benefits to be derived from the corporation's gifts, which include maintenance and operation costs, flow principally to the general public through access to and use of the park, and its continued operation.

This case is distinguishable from a situation where an organization uses its general funds primarily to foster private interests and the benefit, if any, to the general public is only incidental. See *Benedict Ginsberg and Adele W. Ginsberg v. Commissioner*, 46 T.C. No. 6 (1966).

Under the facts presented, the operation and maintenance of the park for the public use is in furtherance of the organization's charitable purpose. Accordingly, acceptance of the gift of land for use in the manner described will not adversely affect the organization's exemption from Federal income tax under section 501(c)(3) of the Code.